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Did Your Company Get a Golden Ticket?

1000 Worksite Audit Notices of Inspection (NOI) were issued by ICE – What should you do if you receive a NOI?

At a meeting of the District of Columbia Bar Association on February 16, 2011, Brett Dreyer, Chief of the Worksite Enforcement, Unit of Homeland Security Investigations, U.S. Immigration and Customs Enforcement (ICE), verified that ICE continues to focus its investigations both on businesses that were brought to their attention by tips and leads, and on those that work in areas of national security and critical infrastructure.



Mr. Dreyer would **not comment** on the possibility of a new round of audits, however, we now have confirmation that Notices of Inspection (NOIs) were served around the country beginning February 17th. Indeed, ICE’s stepped up worksite enforcement strategy has turned away from workplace raids to focus instead on employer compliance and much higher administrative fines.

ICE acknowledged in a statement that “the inspections will touch on employers of all sizes and in every state in the nation – no one industry is being targeted nor is any one industry immune from scrutiny.” The agency declined to name specific businesses to be inspected, according to an article by the [Associated Press](#).

Arguing that this strategy has elevated the recognition of employer responsibilities, ICE is continuing with a quiet launch of a robust plan to audit 1000 businesses nationwide that were carefully selected by local Special Agent in Charge (SAC) offices. Businesses both large and small should consider themselves at risk of this initiative, as ICE has no plans to discriminate. Mr. Dreyer held a captive audience at the DC Bar, and while he did not discuss plans for the NOIs, he did confirm that “the agency continues to be interested in egregious employers as they tend to break other laws in addition to immigration...including paying employees under the table, avoiding taxes and ignoring employee protections.”

Bear in mind that companies do not need to run very far afoul of the law to feel the burning heat of ICE. The Obama administration has resurrected the use of civil fines for paperwork and substantive violations, making shoddy Form I-9 completions a very expensive problem.

The NOIs instruct companies that they have the standard three days to present the Forms I-9 of their employees for inspection. ICE will inspect companies' hiring records to determine whether or not they are complying with the Immigration Reform and Control Act of 1986 (IRCA) and other immigration-related laws. ICE continues to consider these inspections an important tool in the government's enforcement toolbox. This initiative reflects a renewed department-wide focus on targeting employers involved in the hiring of unauthorized workers and related criminal activity.

According to press reports, a quick patchwork of information collected from ICE agents and auditors, and historical procedures, the Homeland Security Investigation unit is coordinating this initiative and the audits are expected to be completed in the next two to three months. Purportedly, each SAC office was provided with a number of



companies to select and, unlike in the last round where size mattered, DHS Headquarters urged local offices to select companies without regard to size, promising additional resources and personnel where necessary.

Certainly the new *Employment Compliance Inspection Center* will be an advantageous resource for the local forensic auditors, as it is expected to provide not only manpower but also guidance on audit protocols and procedures. Last month, Assistant Secretary for ICE John Morton said the new center would have the "express purpose" of providing support to regional immigration offices conducting large audits. "We wouldn't be limited by the size of a company," Morton also reminded employers.

The Particulars

- The staffing levels and regional priorities determine the number of audits. Historically, the larger SACs, such as Los Angeles, St. Paul and Chicago, have a larger number of audits, whereas Baltimore and Honolulu have less. This latest round of 1000 should result in similar numbers in terms of the distribution of audits.
- Auditors may request the I-9s of current workers only, or of current and terminated workers within the requisite time frame: of course the audit can be expanded when necessary.
- Audits can cover the entire workforce or a random sampling. It is expected that samplings will be increased where there is a concern about the quality of the I-9s or where further investigation of the workforce is warranted.
- It is expected that the Form I-9 audit center will support some of these audits, as noted above.
- In an effort to combat the increasing instances of identity theft, record checks will be conducted on the identities of all current employees to determine if there is a possibility of unauthorized workers in the workforce. In the past, record checks have included commercial databases and Federal Trade Commission reports.
- While the local SAC offices have been directed to select targets whose headquarters lie within their jurisdiction and to ensure that companies with open investigations are not targeted, it is still expected that some of these audits will cross state lines.

- The audit center will be asked to review I-9s when the investigation deems that further review outside the local office’s area is required.

What to do if you receive a Notice of Inspection (NOI)

As we discussed in our previous *GT Alerts* [Is That ICE Knocking At Your Door?](#) and [ICE Casts the Last Chill of the Fiscal Year: A New Round of National Audits](#), receipt of a NOI should be taken very seriously regardless of the size of your company. If you receive one, it is critical that you act immediately and secure a team of experienced compliance experts to guide you through the ICE inspection process. We recommend taking the following steps immediately upon receiving an NOI:

- Notify your management and executive team immediately.
 - I-9 government investigations should be handled centrally.
 - Every minute counts, as the law provides just three business days to collect the Forms I-9 (and photocopies of supporting documents) and submit them to ICE.
 - Remember: extensions may be granted in certain circumstances.
- Retain experienced immigration counsel immediately.
 - Inquire as to the specific background the attorney has in defending companies in ICE investigations.
 - Consider the capabilities and platform of the firm, including whether expertise in other areas, such as litigation, white collar defense, government contract law, etc., is available.
 - Request references.
- Gather I-9s and supporting documentation.
 - Compare active and terminated employee lists with payroll records.
 - Review and identify any active employees who do not have an I-9 on file.
 - Take stock of the physical Form I-9s.
 - Alphabetize original I-9s and copies of supporting documents.
 - Review to identify issues of concern.
 - Make corrections, where appropriate, under the supervision of experienced immigration counsel.
 - Remember: corrections can be made to Form I-9s, but depending on the nature of the error, an employer should be the party to make some I-9 corrections, while the employee must make other corrections (Section 1).
 - In some circumstances, companies may create more liability if erroneous changes are made without experienced guidance.
 - Abide by all anti-discrimination provisions and treat employees consistently.
 - Ensure that existing employees are not arbitrarily required to provide new or updated I-9 information or document copies.
 - Prior to submitting forms to ICE:
 - Make copies for the company to reference during the ICE investigation that will follow the NOI.
 - Confirm the “chain of custody” for the company’s documents by having the ICE agent acknowledge, in writing, the exact number of original I-9s that have been relinquished.
- Consider proactive compliance planning, where appropriate.
 - Assess liability at your other locations, if applicable.



- Develop or improve a current compliance plan.
- Provide regular and ongoing training to those responsible for I-9 completion.
 - include anti-discrimination and fraud document seminars.
- Don't be afraid of the cost.
 - Small companies should not have to invest a lot of money to understand their responsibilities.
 - Think about the cost of non-compliance (fines ranging from \$110 to \$16,000 per violation).

We expect additional worksite initiatives to continue throughout 2011 and urge employers to contact their Congressional representatives to request that enforcement be coupled with a dialogue for comprehensive immigration reform. In the interim, diligent employers must tighten their compliance efforts, and those who have not yet instituted compliance initiatives must focus efforts on a comprehensive review of their records, policies and protocols.

If you received a Notice of Inspection or wish to learn more about visa matters and general compliance planning, please contact us to learn more about our services.

Promoting a Culture of Compliance – Best Practices for your Business

- Establish a comprehensive immigration compliance policy.
- Conduct in-house audits of Form I-9 documents and company policies, as well as E-Verify if applicable.
- Establish policies, protocols and training for employment verification.
- Diligently verify the identity of job applicants to ensure that they “are who they say they are.”
- Consider use of E-Verify after consultation with experienced immigration compliance counsel.
- Establish protocols for addressing Social Security No-Match letters.
- Establish and maintain safeguards against the use of the I-9 process for unlawful discrimination.
- Create a protocol for immigration compliance related to contractors and subcontractors.

ICE utilizes various tools to target employers, particularly those involved with critical infrastructure and national security, as well as those that become known to them through tips and leads. Employers must take steps now to ensure full compliance or face serious consequences. Actions taken before a government-initiated audit or investigation generally help mitigate damages, reduce exposure, and save the company both time and money in the long run.

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[Greenberg Traurig’s Business Immigration and Compliance Group](#) has extensive experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment-related issues, particularly I-9 employment eligibility verification matters. GT has defended businesses involved in large-scale government worksite enforcement actions, I-9 audits, Office of Special Counsel queries and Department of Labor Wage and Hour investigations. GT attorneys provide counsel on a variety of compliance-related issues, including:

- Advocacy and Legislative Representation
- Anti-Discrimination Training and Policy
- Badging Policies
- Contractor and Subcontractor Compliance
- Department of Labor H-1B (LCA) Audit Defense
- Eb-5 Investor Regional Center Compliance
- Electronic I-9 Review and Analysis
- E-Verify and FAR Implementation Strategy
- Export Control Immigration Related matters
- HR Compliance Training
- Identity Theft/No-Match Counseling
- I-9 Compliance Policy and Best Practices
- Immigration Due Diligence for Corporate Mergers and Acquisitions
- Office of Federal Contract Compliance Programs (OFCCP) Audit Defense
- PERM Audit Defense
- Smart I-9 Technology
- Supervised I-9 Inspections and Remediation
- Third-Party Compliance Certification Audits
- Worksite Audit and Investigation Defense

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